

HOYER & HICKS
4 Embarcadero Ctr., Ste. 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738
www.hoyerlaw.com



Nicole B. Gage, Esq.
direct (415) 766-3538
ngage@hoyerlaw.com

August 29, 2023

Via Online Submission at <https://dir.tfaforms.net/308>

Labor Workforce & Development Agency
Attn: Attn. PAGA Administrator
PAGAFilings@dir.ca.gov

Via US Certified Mail

Gregory C. Cheng
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111

Re: Ellen Encarnacion and Ross Stores, Inc.

To the Labor and Workforce Development Agency:

Pursuant to Labor Code §2699.3, we hereby notify the Labor and Workforce Development Agency ("LWDA") of violations of the Labor Code by Ross Stores, Inc. ("Ross"). Specifically, Ross has violated the applicable Wage Order and the following Labor Code Sections:

- Whistleblower Retaliation for Reporting Violations of Workplace Safety and Health: 1102.5, 6310
- Termination for Refusing to Work in a Workplace Containing an Occupational Safety or Health Violation: 6311

Ellen Encarnacion worked for Ross as an IT Manager from July 1, 2015 through September 7, 2022 when she was terminated in retaliation for reporting violations of workplace safety and health and refusing to work in person amidst hazardous conditions.

Ms. Encarnacion has facial eczema and Long COVID resulting in ongoing health problems such as erythematous plaques (acute pruritus). Ms. Encarnacion suffers from acute flare-ups of idiopathic plaques and lesions becoming significantly pronounced-to-pruritic after COVID infection. The flare-ups can last for months and can present as pruritic and itchy, impending concentration and personal interaction due to disfigurement. They are further pronounced by Ms. Encarnacion's severe anxiety. Wearing any sort of facial mask can cause pain, swelling, and irritation to the facial lesions.

During Ms. Encarnacion's employment with Ross, specifically from June 26, 2021 to September 7, 2022, her symptoms became intolerable such that she requested an

accommodation of working remotely from her home. Ross initially entertained the request by allowing Ms. Encarnacion to work remotely for months after its return-to-work date. However, when she began to express concerns about workplace health and safety and question Ross's compliance with the law, she was terminated.

Ms. Encarnacion learned that Ross did not have enforceable Cal/OSHA and COVID-19 protocols implemented prior to having its employees return to work in person. Furthermore, the company had not posted Dublin Headquarter-specific Cal/OSHA COVID-19 Prevention Program (CPP) as required by law. Ms. Encarnacion repeatedly raised concerns with management and was ignored.

Ms. Encarnacion also discussed with Ross employees her ongoing concerns with Ross's failure to provide its employees with state-mandated documentation of Cal/OSHA health and safety measures. Ms. Encarnacion learned that other employees shared similar health and safety concerns and there was a collective interest and effort to discuss those concerns.

Ms. Encarnacion drafted a presentation on behalf of herself and other Ross employees setting forth options and work models to overcome the health and safety concerns related to Cal/OSHA and COVID-19 standards. Ms. Encarnacion shared the presentation with Ross's Vice President of Corporate Applications, Tamijet Venkatachalam ("Mr. Venkathachalam") during a one-on-one meeting in late May 2022.

Several days later, on May 27, 2022, Mr. Venkatachalam emailed Ms. Encarnacion stating: "I'm hearing from the team that you are reaching out to individuals about remote work policy. It is confusing to folks between company communication and policies on remote and hybrid work vs your ideas and views about this topic. I need you to stop soliciting this topic immediately."

On June 1, 2022, Ms. Encarnacion emailed Mr. Venkatachalam to note that her efforts to change or alter workplace policies with other employees were a protected activity. In this email, Ms. Encarnacion wrote: "At this point, it would be fair to say that this is no longer an 'individual' issue. For the ongoing reasons and concerns I addressed in my email last Friday (and in these past months), these concerns with COVID health and safety concerns, Cal/OSHA violations, and misappropriating the ADA process have gone unaddressed, after repeated requests to/by IT HR for nearly 6 months." Ms. Encarnacion described her efforts and HR's failed attempts to ensure COVID-19 Cal/OSHA compliance leading to her collective effort to engage other employees to combat the issue.

Ms. Encarnacion continued to raise concerns that Ross and was ignored or brushed aside each time. Finally, on September 7, 2022, Ross terminated Ms. Encarnacion following multiple complaints related to Ross's noncompliance with state and federal COVID-19 health and safety procedures, attempting to organize with other colleagues to protest and/or amend workplace policies, and refusing to work in person given the hazard to her own personal health and safety.

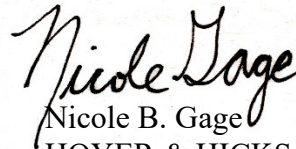
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Our client, Ellen Encarnacion, intends to seek penalties and attorneys' fees pursuant to § 2699, *et seq.*, for Ross's violations as described above. Please notify us of your investigatory intentions as soon as possible. A hard copy of this letter is being concurrently sent to Ross's counsel who responded to our client's request for personnel and payroll records, and another will accompany the PAGA filing fee, also being sent today.

Sincerely,

A handwritten signature in black ink that reads "Nicole Gage". The signature is fluid and cursive, with the first name "Nicole" and last name "Gage" clearly distinguishable.

Nicole B. Gage
HOYER & HICKS

Attorneys for Ellen Encarnacion